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IN THE
Supreme Court of the United States

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October Term, 1969

No. ~~4~~ 2

EVELLE J. YOUNGER,

Appellant,

vs.

JOHN HARRIS, JR., et al.,

Appellees.

Appeal From the United States District Court for the
Central District of California.

**APPELLEES' SUPPLEMENTAL BRIEF
ON REARGUMENT.**

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**APPELLEES' SUPPLEMENTAL BRIEF
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SUMMARY OF ARGUMENT.

Before the District Court below declared California's Criminal Syndicalism Act unconstitutional, appellee Harris unsuccessfully sought relief in all the Courts of California, the state courts having failed to narrow the statute to comply with applicable constitutional limitations—particularly by failing to require that advocacy be accompanied by “incitement to imminent lawless action.”¹

¹As required by this Court, in its unanimous decision in *Brandenburg v. Ohio*, 395 U.S. 444.

In the special circumstances of this case, the refusal of the District Court to abstain from adjudicating the constitutionality of the statute, was not an abuse of discretion; nor did it err in holding unconstitutional, provisions of the statute under which appellee Harris was not charged.²

²The appellant has seen fit to submit to this Court, as an Appendix to his brief, leaflets published by organizations (including George Lincoln Rockwell's American Nazi Party), in *no* way connected with any appellee. Appellee Harris deems it appropriate to furnish to this Court, as a separate Appendix to this brief, all of the evidence before the grand jury and all the proceedings in the California Courts. (The pleadings filed in the appellate Courts of California include the proceedings in the trial court and before the grand jury.)

ARGUMENT.

I.

THE CALIFORNIA COURTS HAVE NOT LIMITED THE STATUTE, TO COMPLY WITH APPLICABLE CONSTITUTIONAL LIMITATIONS.

No charge in the indictment, no evidence before the grand jury, and no construction of the Criminal Syndicalism Act by the California courts, meet constitutional requirements.

1. The Indictment.

The instant indictment is in the language of the statute; the only items which are set forth in the indictment, and are not in the Act, are the texts of two leaflets.

The only "acts" charged against appellee Harris³ are the distribution of these leaflets—one on May 25, 1966, and the other, the next day, May 26, 1966.⁴

The indictment does *not* allege that the appellee's advocacy of a "change in industrial ownership and control", or the affecting (sic) political change" was limited to such change of the State of California, or any of its political subdivisions;⁵ nor that the appellee intended

³From now on, when we refer to appellee, we shall be adverting to Harris.

⁴If ever there is a case involving the exercise of free speech and free press, in its "classic", its "pristine", its "pure" form—this is that case. For doing so, appellee faces a penitentiary sentence of 28 years, 14 years for each leaflet distribution. (California Penal Code §11401, Appellant's Br. p. 4.)

⁵Cf. indictment, in *Samuels v. Mackell*, this Term, No. 11, R. 10 a.

that such change be “presently attempted or accomplished”⁶ nor does the indictment talk of “rifles, shot-guns, firearms, bombs . . .”⁷

No allegation in the indictment charges “incitement to imminent lawless action.”⁸

The trial court upheld the Act, but did *not* narrow its broad sweep. Its minute order (Appendix C, to Petition for Writ of Prohibition in the District Court of Appeal) recites:

“The Court finds that it is of the opinion the statute involved is not unconstitutional and therefore the demurrer is overruled.”

2. The Evidence Before the Grand Jury.

The transcript of *all* the testimony before the grand jury, discloses *no* evidence of any of the items mentioned above, as *not* appearing in the indictment.⁹

In that respect, the evidence in the case at bar, substantially differs also from:

(1) *Epton v. New York*, 390 U.S. 29, 30, in which Justice Stewart stated: “But the State in these cases presented proof that Epton had actively participated in the formation of a group dedicated to armed revolt against the police under the direction of “block captains” and with the assistance of “terrorist bands” equipped with Molotov cocktails that Epton himself had explained how to use.”

⁶*Ibid.*

⁷*Ibid.*

⁸*Brandenburg v. Ohio*, 395 U.S. 444, 449.

⁹We shall discuss later, with more specificity, the nature of the showing before the grand jury.

(2) *Brandenburg v. Ohio*, *supra*, at p. 445, where the evidence introduced included "a pistol, a rifle, a shotgun, ammunition . . ." ¹⁰

(3) *Dennis v. United States*, 341 U.S. 863, which involved a "group of sufficient size and cohesiveness," "sufficiently orientated to actions", so that its "indoc-trination in preparation for future violent action" (see *Yates v. United States*, 354 U.S. 298, 321), and ac-tivities were not protected by the First Amendment.

3. The Proceedings in the California Courts.

Appellant suggests (Brief, p. 25) that in the case at bar, the courts of California were not accorded the "opportunity of construing state statutes (referring to the Criminal Syndicalism Act) in conformity with constitutional requirements." ¹¹

Appellant seems to assert (Brief, p. 25) that appel-lee "first tested" the constitutionality of the Act in the District Court.

The contrary is the fact.

It was only *after* appellee gave *all* California Courts, trial and appellate, full opportunity to narrow the stat-ute, on its face, and as applied to appellee, did he seek relief in the United States District Court. ¹²

¹⁰Here, no fire-arms—not even a pop-gun.

¹¹See also Appellant's Brief, p. 19: "State courts are thus denied the initial opportunity to preserve the constitutionality of state statutes . . ."

¹²This is demonstrated by the Petition for Writ of Prohibition in the California District Court of Appeal, and the Peti-tions for Hearing in California Supreme Court set forth in the separate Appendix to this brief. It is further supported by the factual recitals—*undenied* in the Complaint in the District Court: Paragraph VIII, R. 6.

Under California procedure, the trial court, in the first instance, and the appellate courts thereafter, review the sufficiency of evidence before a grand jury, and halt a prosecution, *prior* to trial, if there is a lack of evidence to support the indictment, or a total absence of evidence supporting a necessary element of the crime charged.

The law of California has always recognized that *no* one—even in the “routine” criminal prosecution—where there is insufficient evidence before a grand jury of the offense charged—could “be required to stand trial and to appeal from a possible adverse judgment (after trial) without being subjected to unreasonable expense, inconvenience and delay”. (*Greenberg v. Superior Court*, 19 Cal. 2d 319, 323.) The California courts have long recognized that even on a “conventional ‘criminal charge’ it would be a grave injustice to petitioner if she were required to undergo the ordeal, ignominy and expense of a trial under the circumstances,”¹³ (where there is insufficient showing before a grand jury.) (*Jensen v. Superior Court*, 96 Cal. App. 2d 112, 118.)

In accord are:

Callan v. Superior Court, 204 Cal. App. 2d 652, 662;

People v. Bartlett, 199 Cal. App. 2d 173, 179;

People v. Byars, 188 Cal. App. 2d 794, 796;

Davis v. Superior Court, 175 Cal. App. 2d 8, 23.

In this case—a prosecution solely for distribution of handbills, and hence subject to the constitutional limita-

¹³We shall discuss later the particular hardship upon a defendant on trial in a state sedition prosecution.

tions established by this Court when the First Amendment is at stake—there are three essential elements:

- (1) Clear and present danger;
- (2) Direct incitement to imminent lawless action;
and
- (3) Specific intent to incite acts directly and immediately in violation of law.

Each of the foregoing was fully urged in all of the California courts;¹⁴ had any of them narrowed the sweep of the statute on its face by applying any one of the three foregoing limitations, the instant indictment should have been ordered dismissed.

i. No Evidence of "Clear and Present Danger."

The prosecution was required to establish that on May 25 and May 26, 1966, the matter set forth in Counts I and II of the Indictment was circulated by appellee under such circumstances as to create a clear and present danger that "a change in industrial ownership and control" and "political change" would be immediately accomplished. In support of this essential element of the offense, the record is entirely barren. There is not the slightest indication in the record that there was any danger of a change in industrial ownership or control or political change as a result of the alleged distribution by the appellee of the two leaflets on the steps of the County Courthouse in Los Angeles during an inquest.

There was testimony from Pierce Brooks, a Lieutenant of Police for the City of Los Angeles [Grand Jury

¹⁴See proceedings in the California Courts in the separate Appendix hereto.

Tr. 22], and from Allen K. Archbald, a police officer of the City of Los Angeles [Grand Jury Tr. 28], which covers approximately 30% of the entire Grand Jury Transcript. The testimony of these two officers dealt with certain events which occurred in the Watts area in Los Angeles in August of 1965 and on March 15-16, 1966. The description of the events included details of injuries to police officers, firemen and civilians which occurred during the aforesaid periods.

The testimony dealt with events which antedated by months or a year the alleged violations charged in the Indictment. By no manner of logic or reason can it be argued that the distribution of a leaflet on May 25 and 26, 1966 in any way created a clear and present danger of events which had already long passed. Nor can it be argued that such testimony was offered to indicate what might happen in the future. Prediction of events in the future from events which occurred in the past is wholly arbitrary, capricious and conjectural. The causes of the Watts riots were highly complex, and there is simply no rational connection between the circulation of two throw-away leaflets on May 25 and 26, 1966 on the steps of a Courthouse with events of the past or any alleged events in the future. Moreover, in either case, the evidence was immaterial and irrelevant, because it in no way was related to any question of clear and present danger on May 25 and 26, 1966, and the evidence was highly incompetent and prejudicial which could have only influenced the Grand Jury arbitrarily against the accused in returning the Indictment and the serious charge contained herein.

See,

Shepard v. United States, 290 U.S. 96.

The testimony of S. L. Holmes, a Captain in the Los Angeles County Sheriff's Office [Grand Jury Tr. 35], showed at the time of the inquest and when it was necessary to obtain larger quarters for the hearing, there were at least 270 police officers available to handle the public desiring to get into the hearing [Grand Jury Tr. 37]. There was the usual pushing and trying to get into the Courtroom, but there is not the slightest indication that there was any clear and present danger of any real disturbance occurring.

Moreover, and it should be emphasized here, that the charge here involves doctrines or precepts advocating change in industrial ownership or political change. The charge here is not disturbing the peace or creating a riot. There is nothing in the testimony to indicate that there was any clear and present danger that industrial ownership or political change was in any way affected by the events of May 25 or May 26, 1966.

The testimony of Oliver Taylor, a Sergeant of the Los Angeles County Sheriff's Department [Grand Jury Tr. 40], simply states that he saw some spectators carrying leaflets, and then further states that other spectators, not identified, "threatened" him and other officers, and that one spectator in effect told the officer that they should not turn their backs on the spectator because if they did he would kill them [Grand Jury Tr. 45]. There is nothing in the record to indicate that those who made these statements had ever seen the leaflets or in any way affected the police officers; nor is there anything to indicate that the officers did not handle the situation in an appropriate manner.

Taylor v. Mississippi, 319 U.S. 583;
Wood v. Georgia, 370 U.S. 375;
Pennekamp v. Florida, 328 U.S. 331;
Herndon v. Lowry, 301 U.S. 242.

ii. No Evidence of "Incitement to Imminent Lawless Action".

Turning to the second necessary element of the offense, it appears that the nature of the language contained in the two leaflets here involved is devoid of "incitement to imminent lawless action." Nothing in the two leaflets calls for immediate action to accomplish a change in industrial ownership or political change. These leaflets contain essentially language which protects existing conditions; calls for reform; and predicts that historically unbearable and tyrannical conditions can only result in resistance by those subjected to such conditions.

The nature and possible effect of a writing cannot be properly determined by picking out here and there a sentence and presenting it separated from the context. It is not apparent on a reading of these two leaflets how it could rationally be held that these leaflets could have in any way threatened immediately and presently industrial and political institutions of the State.

What is the import of the first leaflet contained in Count I of the Indictment? Reading the writing in context, it is plain that it is a protest on behalf of the Negro people in the South of Los Angeles area against alleged police brutality, and the injustice of wholesale unemployment of Negro people in the area who constitute 80% of the work force therein. It is a protest against "murder by cops and death by unemployment". The leaflet stresses that such methods result only in extermination of persons who feel themselves hemmed in as if they were in a concentration camp facing eventual death and destruction.

The leaflet calls for this dire situation to be remedied. It states that the killing of citizens by the police must be brought to an end; that the police should be disarmed; that residents must be given employment in the factories in the area. The slogans employed in the leaflet all call for future action. There is no call for direct immediate action in the entire leaflet. That the concentration camp must develop its own court; that officials must be brought to trial for murder; that citizens will not produce if they do not work, are all prophecies, hopes and expectations which plainly do not call for immediate action.

The leaflet contained in Count II of the Indictment is equally devoid of language inciting to immediate and direct action. The leaflet commences with a quotation from Frederick Douglass made in 1856, wherein the question is posed, whether millions will forever submit to "every unnamed evil" which an "irresponsible tyranny" can devise, because "the overthrow of that tyranny would be productive of horrors." It is stated in the same quotation that the recoil against such horrors will be in exact proportion "to the wrongs inflicted". It is submitted that this philosophy expressed by one of the great leaders of the Negro people is no more than sound American doctrine expressed by the Founding Fathers of the Nation. A tyranny which is unbearable, whether it is the tyranny of a George III, or a Hitler tyranny, cannot be borne forever, and people will revolt even though such defensive action may be violent. Clearly, this quotation from Frederick Douglass expressing a fundamental historical truth cannot be deemed language of incitement to immediate action.

Following the quotation, most of the leaflet thereafter is concerned with the great unemployment problem of black workers in the South Los Angeles area, and the injustice of the grounds for denying employment to such residents. It is argued that public officials acted brutally against the Negro people on prior occasions to protect the interests of the factory owners and other businesses against the interests of the residents of the community.

The final paragraph of the leaflet is again no more than language which deals with the future. It does not call for any immediate action to change the industrial or political institutions. It speaks of the Nation having the right to revolution, and what a revolution means; stresses the need for organization at such a time; and a recognition of the fact that revolt against a tyrannical system may result in suffering by participants.

Neither of the aforesaid leaflets is violative of the statute in the light of the free speech and press provisions of the Federal Constitution.

Cantwell v. Connecticut, 310 U.S. 296, 310;

Schneiderman v. United States, 320 U.S. 118, 157-159;

Wood v. Georgia, 370 U.S. 375;

Terminiello v. Chicago, 337 U.S. 1;

Bridges v. California, 314 U.S. 252;

New York Times Co. v. Sullivan, 376 U.S. 254;

Garrison v. Louisiana, 379 U.S. 64;

Taylor v. Mississippi, 319 U.S. 583;

Edwards v. South Carolina, 372 U.S. 229.

iii. No Evidence of Specific Intent.

On the issue of specific intent, the record is devoid of any evidence to show that appellee construed the

language of the leaflets as a call for immediate or direct action; and the record is devoid of any evidence to show that the appellee, in his own state of mind, in any way intended to immediately and directly accomplish changes in industrial ownership or political change on May 25 and 26, 1966. There is no evidence in the record that appellee had anything to do with the writing, preparation or printing of these leaflets. There is no evidence in the record that appellee even read these leaflets. The leaflets do not bear his name. There is no evidence in the record that appellee ever said a single word on May 25 or 26, 1966, or that he ever did anything of any kind on those days, other than merely hand out the two leaflets. Under such circumstances, it cannot be stressed too strongly that there is complete lack of evidence to prove the essential ingredient of the evil state of mind required by law and the Constitution.

The standards for assessing advocacy of proof needed to make out a case of criminal speech are necessarily strict if the guarantees of the provisions of the Bill of Rights are to be preserved. If proof of guilty knowledge and intent is not established, or, in other words, if *scienter* is eliminated from prosecutions under the Criminal Syndicalism Law, then the statute so construed and applied substantially restricts freedoms of speech and press; causes a self-censorship detrimental to the community and its access to constitutionally protected ideas; and results in the statute violating both the procedural and substantive due process provisions of the First Amendment.

If the State contends that it has a right to prevent the dissemination of the leaflets herein involved and to punish appellee for handing them out, then at the very

least, it is submitted, there should have been proof of specific unlawful knowledge and intent which was clear, convincing and unequivocal, and free from doubt. Instead, the State chose to present no evidence to the Grand Jury who returned the Indictment herein. In view of this failure of proof, the Indictment offends the First Amendment.

Hartzel v. United States, 322 U.S. 680;
New York Times Co. v. Sullivan, 376 U.S. 254;
Herndon v. Lowry, 301 U.S. 242;
Smith v. California, 361 U.S. 147;
Schneiderman v. United States, 320 U.S. 118;
Keegan v. United States, 325 U.S. 478;
Fiske v. Kansas, 274 U.S. 380;
Elfbrandt v. Russell, 384 U.S. 11.

We are as baffled—as this Court may be—in attempting to determine why the courts of California—particularly its Supreme Court, did not—as, for example, the New York Court of Appeals did in *People v. Epton*, 19 N.Y. 2d 496 at 507, 281 N.Y.S. 2d 9 at 17, (Transcript in *Samuels*, #11, at 69a) narrow California's Criminal Syndicalism Act,¹⁵ in the case at bar; and,

¹⁵It suggested some narrowing, albeit in dictum, as stated by Appellant, (at p. 17) in 1946, in *Danskin v. San Diego School District*, 28 Cal. 2d 536, 171 P. 2d 885, 891, to "imminent danger".

Much more recently, in *American Civil Liberties Union v. Board*, 59 Cal. 2d 203 (1963) (relying on *Whitney v. California*, 274 U.S. 357) it upheld the statute without suggesting any constitutional limitation, in a case in which its ruling on that issue was *not* dictum.

In any event, neither the California Supreme Court, any California intermediate Court of Appeals, nor even any trial court, has *ever* limited the statute as did the New York Courts in *Epton*, *supra*; nor has any California court by judicial gloss or interpretation narrowed its application to advocacy which constitutes incitement to imminent lawless action.

why it failed to apply the constitutional standards we urged upon it.

But the hard, inescapable fact is that, *in this case*, and as to *this* appellee, it didn't.

And that is why he sought relief in the United States District Court below.

II.

**IN THE SPECIAL CIRCUMSTANCES OF THIS CASE
AND IN THE SPECIAL CONSIDERATIONS HERE
THE REFUSAL OF THE UNITED STATES DIS-
TRICT COURT TO ABSTAIN FROM DECIDING
THE CONSTITUTIONALITY OF THE STATUTE
WAS NOT AN ABUSE OF DISCRETION.**

These circumstances and considerations are:

1. Appellee made every effort to persuade the California courts to limit the overbreadth of the statute. Complaint, U.S. District Court, paragraph VIII, R. 6.

Under the law of California and under California procedures, both the unconstitutionality of a statute, and the sufficiency of the evidence before a grand jury, as to every essential element of the offense charged, may be challenged prior to trial, in the trial court and in the appellate courts. Such a challenge was made by appellee. Paragraph VIII, R. 6; see, also, District Court's opinion, R. 21.

2. The *only* "acts" charged against appellee was the distribution of leaflets. Complaint, Paragraph VI, R. 6.¹⁶

¹⁶At the oral argument before the District Court, the judges requested that the leaflets be submitted to the Court; they were.

(The appellant in the District Court filed no answer; submitted no affidavit; made no claim, comparable to those asserted in *Samuels*, or *Epton*, *supra*; nor, was any such assertion made in any of the California courts.)

Accordingly, it was clear to the District Court that at issue was "pure" speech—not speech brigaded with arms.

3. The California Criminal Syndicalism Act is an old statute;¹⁷ it was adopted by the legislature of California half a century ago; it was enacted to deal with what California legislators then deemed a specific need^{17a} dangers from a particular organization, the Industrial Workers of the World. That group is no longer in existence, in California, or anywhere else; and danger from it is similarly non-existent.¹⁸ Neither

¹⁷It is a statute, not a Constitution; it is not a Constitution designed to meet changing needs, and codify great principles for future generations.

^{17a}It may be that there was in California a "clear and present danger", from its activities. The California Legislature made findings to that effect, declaring "large numbers of persons (were) going from place to place, in this State . . . practicing criminal syndicalism", i.e., sabotage. (Emphasis ours.) Section 4 of the Act, quoted in Mr. Justice Brandeis' concurring opinion in *Whitney v. California*, 274 U.S. 357, 379. Indeed, Justice Brandeis was of the view that:

"In the present case, however, there was other testimony which tended to establish the existence of a conspiracy, on the part of the Industrial Workers of the World, to conduct *present serious crimes*." (Emphasis ours).

¹⁸See Dowell, "A History of Criminal Syndicalism Legislation in the United States," LVII Johns Hopkins University Studies in Historical and Political Science (1939) (cited by this Court in *Brandenburg*, at p. 447, *supra*); also, *Chaffee*, Free Speech in the United States, Ch. 10, p. 326, et seq.; as well as *Woodrow C. Whitten*, Criminal Syndicalism and the Law in California; 1919-1927, in Transactions of the American Philosophical Society, New Series, Volume 59, part 2, 1969, and *Prof.*

the Legislature of California, nor any California court, has, during the last four decades, found any comparable danger; the alarms of California's Attorney General (Appellant's Brief, pp. 10-15) are the partisan rationalizations of an over-zealous prosecutor.¹⁹ He ap-

George W. Kirchwey, "A Survey of the Workings of the Criminal Syndicalism Law of California," 1926 (pamphlet published by the American Civil Liberties Union).

Because we are uncertain whether the Library of this Court, or the Congressional Library has the last two documents, we are forwarding them to the Librarian of this Court, for convenient access to the members of the Court; we are submitting them first to counsel for the appellant.

¹⁹None of the publications or incidents referred to was submitted as evidence before the Grand Jury; in point of fact, they couldn't have been; they are all two or three years *after* the appellee's circulation of the "forbidden" leaflets. Indeed, the Attorney General would outlaw some advocacy if it contained "rhetoric" (Brief, p. 12, f.n. 1).

He considers speech "quite literally, a lethal weapon." (p. 14).

To be noted is that the legislature of California (or any judge in California) has not seen the peril to California, or its political subdivisions, which the prosecutors "discovered" in the preparation of appellant's brief in this Court; nor has the legislature (since 1919) seen the need for legislation protecting California from a "change in industrial ownership or control" or from political change, from advocacy or otherwise.

And yet when confronted with a specific evil or need, it has acted and with "urgency." In 1966, it made penal "incitement to riot" Penal Code §404.6; in 1965, as stated by appellant (p. 11) it enacted Penal Code 11460, to bar practicing with weapons.

We have already adverted to the special findings made by the California legislature in 1919, upon adopting the Criminal Syndicalism Act.

When confronted with what it deemed to be a danger from Communism, it made elaborate findings in 1953, in Government Code §1027.5; as it did again in 1959, in Education Code §12591.

In both these findings it used the phrase "clear and present danger." as it did in Penal Code §404.6, in 1966.

We suggest, accordingly, that if there were a clear and present danger in California in 1969 (or there were in 1966 when ap-

(This footnote is continued on the next page)

parently is on a crusade to save "distorted perceptions of sick minds" from "hate literature"; (Appellant's Brief, p. 14) and finds authority so to do battle in the courts, by criminal prosecutions, under California's Criminal Syndicalism Act.

Thoughtful scholars have weighed the statute, and found it wanting.

Dowell, supra (at p. 145), condemns it as designed "to eliminate the existence and activities of radical groups."

Whitten, supra, after studying the administration of the Act in the California Courts, concluded (at p. 64) that it was, in one respect, an instrument of "governmental suppression unwarranted by the facts and conditions of the times, and hazardous to American civil liberties."

Chaffee, supra (at p. 327), noted that "these Criminal Syndicalism Acts soon became a dead letter in most States, not so in California."

(In point of fact, it did, after the 20's; it was disinterred and revived in the 30's, (albeit in only two prosecutions)—this time against agricultural workers' leaders who were Communists:

People v. Horiuchi, 114 Cal. App. 415, 300 Pac. 457 (1931) and *People v. Chambers*, 22 Cal. App. 2d 687, 72 P. 2d 746 (1937).

pellee distributed the leaflets) from advocacy of change the legislature of California would have seen it as clearly as the prosecutors in the case at bar.

The appellant sees shadows—that are the product of his own imagination.

California is not in peril; and appellee's leaflets did not put it in peril.

The case at bar is the first prosecution in over three decades.

In 1926, Prof. Kirchwey, *supra*, (at p. 37), after a thorough study, considered use of the Act had come to an end.

He concluded: "The game is over. It wasn't a good game and it was on the whole, badly played,²⁰ in an amateurish way and with too little of the professional spirit—much too savagely and with too little regard for the rules of the game."²¹

In the instant prosecution, California seeks to resume the game; the California Courts should have stopped it; they didn't.

In the light of the foregoing, it was entirely proper for a United States District Court to do so.²²

4. The jurisdiction of the District Court, to adjudicate the constitutionality of the statute by declaratory judgment, seemed clear to it; it is based upon a recent *unanimous* decision of this Court, *Zwickler v. Koota*, 389 U.S. 241 (1967); upon which the court below properly relied and appropriately followed.

²⁰Witness the prosecutor's approach as demonstrated in Brief for Appellant, pp. 10-15, and Appendix thereto.

²¹It is the kind of a state enactment of which this Court said, in *Thornhill v. Alabama*, 310 U.S. 97, 98:

"The existence of such a statute which readily lends itself to harsh and discriminatory enforcement by local prosecuting officials against particular groups deemed to merit their displeasure, results in a continuous and pervasive restraint on all freedom of discussion that might reasonably be regarded within its purposes."

²²There is no more warrant for prosecutions under a state sedition statute in 1969, than there was for the enforcement of the federal Sedition Act in 1798. See *New York Times v. Sullivan*, 376 U.S. 254, 273.

In *Zwickler* (at p. 255), Mr. Justice Harlan summarized the rationale for the doctrine of abstention with the following quotation from *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 32; that "abstention" is appropriate "where the order to the parties to repair to the State Court would clearly serve one of two countervailing interests: either the avoidance of premature and perhaps unnecessary decision of a serious constitutional question, or the avoidance of the hazard of unsettling some delicate balance in the area of federal-state relationships."

The ruling of the District Court here offended neither of these interests.

(1) It was neither premature nor unnecessary;²³ the appellee has already been through all the California courts.

(2) Its ruling does not upset any balance between state and federal judicial power; it should come as no shock to any state court, when it has refused or failed

²³Surely a defendant, in a state sedition case, ought not to be required to submit, prior to securing redress from a United States Court, where he asserts an abridgement of the United States Constitution, to the vast sweep and long weeks of such a trial.

These are now of common knowledge from considerable experience with such trials in the 1950's. And, in the instant case, California prosecutors propose to try appellee not alone for his words, but for the publications and activities of persons and organizations, on the extreme political left and right, with none of whom he had had any contact, some of whom he devoutly detests—and with one of whom, who is now dead (See Appendix, p. 46, sketch of George Lincoln Rockwell).

No man should be subjected to such a trial (under such a statute as here); certainly, no poor man.

No Negro should be thus subjected; certainly, no poor Negro.

(This Court has permitted appellee to defend the instant appeal *in forma pauperis*.)

to exercise its jurisdiction to protect a United States constitutional right, for a United States Court to exercise its jurisdiction, and protect that right.

Indeed, the appellant, as we understand him (Brief at p. 37) does not question the jurisdiction of the District Court to enter a declaratory judgment—for he cites, with apparent approval, *Ware v. Nichols*, 266 F. Supp. 564 at 569, in which a United States District Court declared Mississippi's Criminal Syndicalism Act to be unconstitutional.²⁴

The objection of the appellant is to the preliminary injunction issued (*Ibid.*, p. 37).

But that interstitial injunction *pendente lite* was proper for two reasons:

1. It was ordered out of a concern of the Court below, for the *rights* of the *appellant*—to assure that he had a right of appeal to this Court [R. 38].

2. The appellant having filed no responsive pleading in the Court below, that Court, manifestly, could not enter a final declaratory judgment; it, therefore, following its ruling and opinion of March 11, 1968, retained jurisdiction over the cause until final judgment, on the merits; accordingly, it had jurisdiction to issue a preliminary injunction, "because necessary in aid of its jurisdiction", within that express provision in 28 U.S.C. §2283.

²⁴In *Cameron v. Johnson*, 390 U.S. 611, a unanimous Court again held declaratory judgment by a United States District Court appropriate.

III.

BOTH APPELLEE HARRIS AND THE OTHER APPELLEES HAVE STANDING IN THE DISTRICT COURT TO CHALLENGE THE CONSTITUTIONALITY OF ALL SECTIONS OF THE STATUTE.

The central constitutional challenge in the District Court of the *entire* statute, by all the appellees, is its overbreadth, on its face, after the California courts had failed to narrow it, on its face or as applied; and the statute affects speech.

In that circumstance, the appellant is in error in urging, in effect, that the constitutionality of each provision of the Act be separately adjudicated, in a series of criminal prosecutions. It is precisely where a "plethora of statutory provisions are assailed as invalidly, vague, uncertain or over-broad, with a consequent reach into areas of expression protected by the First Amendment" that "hammering out the structure of the statute piecemeal" is not required.

Mr. Justice White, dissenting in *Cameron v. Johnson*, 381 U.S. 741, 754, 756.

See also *Baggett v. Bullitt*, 377 U.S. 360 and *Dombrowski v. Pfister*, 380 U.S. 479.

The appellees, other than Harris, in the complaint in the District Court (prior to their counsel's reading Mr. Justice White's words, in *Cameron*, *supra*) in effect allege [R. 5] that the statute has an *in terrorem* effect upon their expression of opinion as members of the Progressive Labor Party, and as history instructor, respectively.

They find support in their apprehension because of the sweep of the statute—its overbreadth and vague-

ness, in the views of Justice Clark, speaking for the Court in *United States v. National Dairy Prod. Corp.*, 372 U.S. 29, 36.

Speaking of the First Amendment, he said: "There we are concerned with the vagueness of the Statute 'on its face' because such vagueness may in itself deter constitutionally and socially desirable conduct."

All appellees have standing to complain—as they do complain—that the presence of the statute in the California Penal Code (as an enforceable provision) for half a century is too long.

Respectfully submitted,

A. L. WIRIN,
FRED OKRAND,
FRANK S. PESTANA,
Counsel for Appellees.

EVELL J. YOUNGER,

Appellant.

vs.

JOHN HARRIS, Jr., et al.,

Appellees.

Appeal From the United States District Court for the
Central District of California.

**APPENDIX TO APPELLEES' SUPPLEMENTAL
BRIEF ON REARGUMENT**

(Portions of Documents Lodged With the Clerk of
This Court).

A. L. WIRIX,
FRED OKRAND,
257 South Spring Street,
Los Angeles, Calif. 90012,

FRANK S. PESTANA,
1680 Vine Street,
Hollywood, Calif. 90028,
Attorneys for Appellees.

IN THE
Supreme Court of the United States

October Term, 1969
No. 4

EVELLE J. YOUNGER,

Appellant,

vs.

JOHN HARRIS, JR., *et al.*,

Appellees.

Appeal From the United States District Court for the
Central District of California.

**APPENDIX TO APPELLEES' SUPPLEMENTAL
BRIEF ON REARGUMENT.**

(Portions of Documents Lodged With the Clerk of
This Court).

In Appellees' Supplemental Brief on Reargument
(page 2, f.n. 2) we stated to this court:

"The appellant has seen fit to submit to this Court, as an Appendix to his brief, leaflets published by organizations (including George Lincoln Rockwell's American Nazi Party), in no way connected with any appellee. Appellee Harris deems it appropriate to furnish to this Court, as a separate Appendix to this brief, all of the evidence before the grand jury and all the proceedings in the California Courts. (The pleadings filed in the appellate Courts of California include the proceedings in the trial court and before the grand jury.)"

We have submitted all of the proceedings in the California Appellate Courts to the Clerk of this Court for printing at the Government's expense. (This Court has entered an order permitting appellee to defend herein *in forma pauperis*.) We have been advised by the Clerk that the Appendix to our Supplemental Brief will not be printed but will be held in his office and will be available to the members of the Court. With that determination by the Clerk, we have no quarrel. We are of the view, however, that the indictment and the transcript of the grand jury proceedings should be in a form more convenient to the members of the Court than lodgement of a single copy with the Clerk of the Court.

Because we do not have the funds to print all the documents we print here the Indictment and the Grand Jury Transcript.

We are making these documents (as well as the other documents lodged with the Clerk) available to the Court for the limited purpose of bringing to the attention of this Court the nature of the proceedings in the California Courts; and solely pertaining to the abstention point in this case.

Respectfully submitted,

A. L. WIRIN,
FRED OKRAND,
FRANK S. PESTANA,
Attorneys for Appellees.

INDICTMENT.

CRIMINAL SYNDICALISM

(Sec. 11401(3), P. C.)—Counts I and II.

Superior Court of the State of California, for the County of Los Angeles.

The People of the State of California, Plaintiff,
v. John Harris, Jr., Defendant S. C. No. 328981.

The said JOHN HARRIS, JR., is accused by the Grand Jury of the County of Los Angeles, State of California, by this indictment, of the crime of CRIMINAL SYNDICALISM, in Violation of Section 11401 (3), Penal Code of California, a felony, committed prior to the finding of this indictment, and as follows:

That on or about the 25th day of May, 1966, at and in the County of Los Angeles, State of California, the said defendant, JOHN HARRIS, JR., did willfully, unlawfully and feloniously issue, circulate and publicly display certain papers, pamphlets, documents, posters and written and printed matter and other forms containing, and carrying written and printed advocacy of, teaching, aid and abetment of and advising criminal syndicalism, to wit: advocating terrorism and advising the commission of crime, sabotage and other willful and malicious damage and injury to property and unlawful acts of force and violence and unlawful methods of terrorism as a means of accomplishing a change in industrial ownership and control and affecting political

change. That said written and printed matter herein-
before referred to is:

WANTED FOR THE
MURDER OF
LEONARD DEADWYLER:
(a member of the concentration camp)

“BOVA —the—COP”
(a guard in the concentration camp)

Bova is just one cop in the police department. They must all be wiped out before there is complete freedom. South Los Angeles—Watts is one big concentration camp in which its citizens are subject to systematic extermination.

—WE MUST LEARN TO DEFEAT THE ENEMY
BEFORE WE ARE ALL EXTERMINATED.

—THE MEMBERS OF THE CONCENTRATION
CAMP CAN BE WIPED OUT BY HUNGER
ALSO. THAT'S WHY UNEMPLOYMENT IS
HIGH.

South Los Angeles is a big industrial complex. There are factories that employ thousands right in the backyards—(General Motors on Alameda and Goodyear on Central just to name two large ones)—of our homes. Black people make up 80% of the South L.A. area. Black people should make up 80% of the work force in the South L.A. area.

—WE SHOULD BE ABLE TO WORK WHERE
WE LIVE.

The slogan should be raised:

—“IF 80% OF US DON'T WORK HERE, YOU
DON'T PRODUCE”.

Production can be stopped.

Murder by cops and death by unemployment are methods of systematic extermination.

—THIS EXTERMINATION ISN'T GOING TO BE STOPPED BY GOING TO THE COURT OF THE EXTERMINATOR AS ADVISED BY SOME "NEGRO" POLITICIANS AND PREACHERS.

—GEORGE WASHINGTON AND THE AMERICAN REVOLUTIONARIES NEVER WENT TO KING GEORGE'S COURT. THE JEWS NEVER ASKED TO GO TO HITLER'S COURT.

—THE CONCENTRATION CAMP MUST DEVELOP ITS OWN COURT AND ITS OWN METHOD OF TRIAL. . . .

These slogans must be raised:

"BRING PARKER, YORTY, AND BOVA TO TRIAL FOR MURDER—IN A COURT OF THE PEOPLE".

"DISARM THE GUARDS IN THE CONCENTRATION CAMP".

"IF 80% OF US DON'T WORK IN THE FACTORIES, *YOU* DON'T PRODUCE!!!"

Progressive Labor Party

399-6819

COUNT II

For a further and separate cause of action, being a different offense of the same class of crimes and offenses as the charge set forth in COUNT I hereof, the said

JOHN HARRIS, JR.

is accused by the Grand Jury of the County of Los Angeles, State of California, by this indictment, of the crime of CRIMINAL SYNDICALISM, in Violation of Section 11401(3), Penal Code of California, a felony, committed prior to the finding of this indictment and as follows: That on or about the 26th day of May, 1966, at and in the County of Los Angeles, State of California, the said defendant,

JOHN HARRIS, JR.

did willfully, unlawfully and felonious issue, circulate and publicly display certain papers, pamphlets, documents, posters and written and printed matter and other forms containing, and carrying written and printed advocacy of, teaching, aid and abetment of and advising criminal syndicalism, to wit: advocating terrorism and advising the commission of crime, sabotage and other willful and malicious damage and injury to property and unlawful acts of force and violence and unlawful methods of terrorism as a means of accomplishing a change in industrial ownership and control and affecting political change. That said written and printed matter hereinbefore referred to is:

THE NEED FOR REVOLUTION

" . . . Shall the millions forever submit to robbery, to murder, to ignorance, and every unnamed evil which an irresponsible tyranny can devise, because the overthrow of that tyranny would be productive of horrors? We say not. The recoil, when it comes, will be in exact proportion to the wrongs inflicted; terrible as it will be, we accept and hope for it . . ."

Frederick Douglass

—1856

There are 50,000 unemployed black workers in the South Los Angeles Area. Eighty per cent of the South L.A. area is black yet black people make up only some 5% of the jobs in factories right in the neighborhood like General Motors on Alameda and Goodyear on Central. Contrary to the lies preached by the capitalists and their apologists, 90% of the jobs in these factories can be done by illiterates. How much training does it take to put a wheel on a car in an assembly line or turn a bolt? The retraining program IS A FRAUD !!! Between 1960 and 1965 the average white family income in Los Angeles *rose* 14%—but the black family's income *fell* 8%. Every killing that happened at the hands of the cops during the August rebellion was ruled "justifiable homicide". Was it justifiable to shoot people in their apartments or anywhere?

Why?—The cops, Yorty, Parker, Brown, and the whole lot are paid to protect the interests of the rich white imperialists. Those who own factories like GM and Goodyear. South L.A. is a big industrial complex with enough jobs for everyone in the area. The national guard was really sent in to protect the big industries, not the small corner stores, liquor stores, and pawn shops.

It is these big industrialists and their spokesmen like Yorty and Brown who must be defeated.

They can't be defeated by pleading and begging. Any nation has the right to revolution and self-determination. REVOLUTION IS NECESSARY. They must be totally replaced. Revolution means a complete *overthrow* of the system. NO ACCOMMODATION !!

NO COMPROMISE. The community must be organized block by block. There must be a block leader for each 20 houses who organizes for defensive and offensive actions. Maps must be constructed of the whole neighborhood.

We must not fear revolution but we must welcome it.

" . . . Revolution is bloody, revolution is hostile, revolution knows no compromise, revolution overturns and destroys everything that gets in its way. And you, sitting around here like a knot on the wall, saying, I'm going to love these foks no matter how much they hate me. No, you need a revolution . . ."

Malcolm X
—1964

Welcome revolution—Organize for Revolution
Progressive Labor Party
399-6819 or WE 3-0463

WITNESSES
ALLAN K. ARCHBOLD
PIERCE BROOKS
JAMES HARRIS
S. I. HOLMES
CARLTON SULLIVAN
OLIVER TAYLOR
EARL THORSON
GEORGIA HAGA
A TRUE BILL
/s/ Averill H. Munger
Foreman of the Grand Jury

Presented by the Foreman of the Grand Jury, in the presence of the Grand Jury, in open Superior Court of the State of California, within and for the County of Los Angeles, and filed as a record in said Court this 20th day of September 1966.

William G. Sharp, County Clerk

By

Deputy

Evelle J. Younger

William E. McKesson, District Attorney

Bail Recommended

\$.....

Bail

REPORTER'S TRANSCRIPT OF GRAND JURY
PROCEEDINGS.

September 20, 1966.

The Grand Jury of the County of Los Angeles,
State of California.

* * *

The People of the State of California, Plaintiff, vs.
John Harris, Jr., Defendant. No. 328981.

APPEARANCES:

PATRICK T. McCORMICK

Deputy District Attorney of the County of Los
Angeles, representing the Office of the District
Attorney.

LOIS R. JOHNSON, duly appointed and sworn
as the official shorthand reporter of the Grand
Jury.

LOS ANGELES, CALIFORNIA, TUESDAY,
SEPTEMBER 20, 1966. 10:15

* *

(The Court Reporter, Lois R. Johnson, was duly
sworn by the Foreman as follows:

The Foreman: You do solemnly swear that you
will correctly take in shorthand and correctly trans-
scribe, to the best of your ability, all of the testi-
mony given by each and every witness testifying
in the matters now pending before this Grand
Jury, and that you will keep secret and divulge to
no one any of the proceedings of this Grand Jury,
so help you God?

The Reporter: I do.)

The Foreman: We have one defendant, John
Harris, Jr.

The matters to be considered: This case involves the named defendant, who on May 25th and 26th allegedly handed out leaflets entitled "Wanted for Murder, Bova the Cop," and "The Need for Revolution," to persons attending the Deadwyler inquest which was being held by the Los Angeles Coroner's Office on those dates.

It is alleged that these named leaflets advocate revolution and physical violence in an effort to bring about a political change. Allegedly, these acts were done in a climate in which a very real danger existed and physical violence and civil eruption were liable to occur.

Any member of the Grand Jury who has a state of mind in reference to the case, or to any of the parties involved, which would prevent him from acting impartially and without prejudice to the substantial rights of any of the said parties will now retire.

Mr. McCormick.

The Foreman: Who is your first witness?

Mr. McCormick: Mr. Earl Thorsen.

The Sergeant at Arms: Mr. Thorsen, please.

Right by that chair, sir.

EARL THORSEN,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.
(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do.

Mr. McCormick: At this time, Mr. Foreman, may I mark these exhibits?

I have two leaflets which are stapled together. The first page bears a likeness of former Chief Parker, Los Angeles Police Department, and the legend "Wanted for Murder, Parker the Copy (sic) in Watts, Progressive Labor Party."

The second page is a text entitled "The Need for Revolution."

May these two leaflets as stapled together be marked Grand Jury 1?

The Foreman: We will mark them No. 1.

Mr. McCormick: I have a second leaflet which begins "Wanted for Murder of Leonard Deadwyler, a member of the concentration camp, Bova the Cop, a guard in the concentration camp."

May this leaflet be marked Grand Jury 2?

The Foreman: We will mark it No. 2.

Mr. McCormick: I have a photograph that bears the number 28 and a date 5-26-66. It indicates a male Negro standing on some steps holding in his right hand what appears to be Exhibit 1.

May this photograph be marked Grand Jury 3?

The Foreman: We will mark it No. 3.

Mr. McCormick: I have another photograph which bears the date 5-20-66 and a number 7. It appears to be a photograph of the same person depicted in Grand Jury 3. And in this photograph he appears to be standing in the hallway with numerous other persons.

May this be marked Grand Jury 4?

The Foreman: We will mark it No. 4.

Mr. McCormick: And I have another photograph depicting a male Negro person with leaflets over the left

arm standing in what appears to be a doorway at the top of some stairs.

May this be marked Grand Jury 5?

The Foreman: Mark that No. 5.

EXAMINATION

By Mr. McCormick:

Q Mr. Thorsen, what is your business or occupation, sir?

A At the present time I am a fingerprint expert, but at the time the photographs were taken I was a senior photographer assigned to the SID section of the Los Angeles Police Department.

Q You are employed by the Los Angeles Police Department?

A Yes, I am.

Q Looking at the three photographs which have been marked 3, 4 and 5, do you recognize any one or more of those photographs?

A Yes, I recognize one.

Q Which one is that, sir?

A Exhibit No. 4.

Q And did you take that photograph?

A Yes, I did.

Q And when and where did you take the photograph?

A I took it on the 20th of May in the new court building.

Q That is, the new Courthouse here in the City of Los Angeles?

A City of Los Angeles.

Q And what is depicted in that particular exhibit?

A Well, it shows a Negro man with a paper in his hand, numerous other people behind him. He is in the foreground.

Q And that was in the interior of the Courthouse?

A Yes, sir; it was.

Q Was there anything going on at the Courthouse that caused you to be there at that time?

A Yes. It was during the Deadwyler investigation.

Mr. McCormick: Nothing further from this witness.

The Foreman: Thank you for coming, sir. You are excused.

Mr. McCormick: Mr. Sullivan.

The Sergeant at Arms: Mr. Sullivan, please.

Over by that green chair.

CARLETON SULLIVAN,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.

(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do.

By Mr. McCormick:

Q Mr. Sullivan, what is your occupation, sir?

A Photographer.

Q By whom are you employed?

A City of Los Angeles, the Los Angeles Police Department.

Q Were you employed in that capacity during May of this year?

A Yes, I was.

Q Mr. Sullivan, in front of you are three photographs. Would you look at these three photographs, please.

(Witness complies.)

Q Do you recognize one or more of those photographs?

A Yes, I do; two of them.

Q Which ones do you recognize? They are marked as exhibits, I believe.

A Exhibit 3 and Exhibit 5.

Q And did you take those photographs, sir?

A Yes, I did.

Q In regard to Exhibit 3, would you tell this Grand Jury when and where you took that photograph?

A It was on the steps of the Courthouse on May 26th.

Q That is, the Los Angeles Courthouse situated here in downtown Los Angeles?

A Yes.

Q And was there anything being heard at the Courthouse at that time that occasioned you being there?

A The Deadwyler inquest was in session.

Q And regarding the other photograph—is that 5?

A Yes.

Q Did you take that photograph?

A Yes, I did.

Q When and where did you take that photograph?

A On the steps in front of the Courthouse during the Deadwyler trial.

Q And what date?

A May 23rd.

Q Of this year?

A Yes.

Mr. McCormick: No other questions.

The Foreman: Thank you for coming, sir.

Mr. McCormick: This is Georgia Haga. She is a substitute for Mr. Warren.

GEORGIA HAGA,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.

(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do.

The Foreman: Sit right here.

The Witness: Shall I get them out, sir?

The Foreman: Talk right into the microphone, please.

The Witness: Yes, sir.

EXAMINATION

By Mr. McCormick:

Q Mrs. Haga, what is your occupation, please?

A I am a customer service supervisor for the General Telephone of California.

The Foreman: May we have the spelling of her name, please?

Q By Mr. McCormick: May we have the spelling of your name?

A Yes, sir. H-a-g-a, my last name.

Q Your first name is Georgia?

A Georgia.

Q Do you have the files and records of the company by which you are employed for a telephone number 399-6819?

A Yes, sir.

Q And are those records kept under your supervision?

A Yes, sir.

Q Do your records indicate who the subscriber is for that telephone number?

A Yes, sir.

Q Who is the named subscriber?

A John Harris.

Q And do the records indicate the address at which that telephone is located?

A They do.

Q And what is the address?

A 22½ Thornton Avenue, Venice.

Q When was the number first subscribed to by Mr. Harris?

A On December 10, 1965, it was installed. It was requested on the same day—on the 6th, I beg your pardon.

Q Is that telephone number 399-6819 being used at the location you gave us still?

A That's right.

Q Is Mr. John Harris still the subscriber?

A Yes, sir.

Mr. McCormick: I have nothing further.

The Foreman: You are excused, and thank you for coming.

Mr. McCormick: James Harris.

The Sergeant at Arms: James Harris, please.

Over by that green chair, sir.

JAMES HARRIS,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.
(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do, sir.

The Foreman: Would you have a chair, please.

EXAMINATION

By Mr. McCormick:

Q Mr. Harris, what is your occupation?

A I am a detective with the District Attorney's Intelligence Detail.

Q That is the District Attorney of Los Angeles County; is that right?

A Yes, sir; it is.

Q Were you so employed during May of 1966?

A Yes, sir.

Q And during May of 1966, did you attend the inquest into the death of Leonard Deadwyler which began on May 19th?

A Yes, sir; I did.

Q And before you are three exhibits which have been marked Grand Jury's 3, 4 and 5. Would you examine those exhibits, please?

(Witness complies.)

Q Have you examined them?

A I have, sir.

Q Looking at the person depicted in the photograph, Grand Jury 3, do you recognize that person?

A I do, sir.

Q And what is the name of that person, sir?

A That is John Wesley Harris, Jr.

Q And the picture, Grand Jury 4, have you examined it?

A I have, sir.

Q Now, there is a person prominent in the foreground wearing a white shirt.

Do you recognize that person?

A Yes, sir.

Q And who is that?

A That's also John Wesley Harris, Jr.

Q And the photograph, Grand Jury 5—

A This is 5.

Q —the person depicted there wearing the dark glasses with the leaflets over his arm, do you recognize that person?

A I do, sir.

Q Who is that, sir?

A John Wesley Harris, Jr.

Q Have you ever observed Mr. Harris at any residence here in Los Angeles County?

A No, sir; not directly at his residence. I know where he resides.

Q How do you know that, sir?

A As a result of an investigation which we have conducted.

Q Conducted by you?

A Yes, sir.

Q Personally?

A Yes, sir.

Q And what address have you associated him with?

A 22½ Thornton Court, Venice, California.

Q Mr. Harris, I have an exhibit which has been marked Grand Jury 1.

Would you examine that, please?

(Witness complies.)

Q Have you seen that before?

A Yes, sir; I have.

Q Did you receive the exhibit from any person?

A I did, sir.

Q And when and where did you receive it?

A On the steps of the County Courthouse on 26 May, 1966, from John Harris, Jr.

Q That is the person depicted in photographs 3, 4 and 5?

A Yes, sir; it is.

Q And for the record, would you describe and read the text of that exhibit, please.

A The first sheet is a picture of former Chief Parker, Los Angeles Police.

Across the top is printed "Wanted for Murder," and across the bottom "Parker the Cop in Watts, Progressive Labor Party."

The appended sheet states, headed "The Need for Revolution."

And then in quotes:

"' . . . Shall the millions forever submit to robbery, to murder, to ignorance, and every unnamed evil which an irresponsible tyranny can devise, because the overthrow of that tyranny would be productive of horrors? We say not. The recoil, when it comes, will be in exact proportion to the wrongs inflicted; terrible as it will be, we accept and hope for it . . . ' "

That is signed "Frederick Douglass, 1856."

Then the text begins:

"There are 50,000 unemployed black workers in the South Los Angeles area. 80 per cent of the South L. A. area is black yet black people make up only some 5 per cent of the jobs in factories right in the neighborhood like General Motors on Alameda and Goodyear on Central. Contrary to the lies preached by the capitalists and their apologists, 90 per cent of the jobs in these factories can be done by illiterates. How much training does it take to put a wheel on a car in an assembly line or turn a bolt. The restraining program is a fraud.

"Between 1960 and 1965 the average white family income in Los Angeles *rose* 14 per cent—but the black family's income *fell* 8 per cent.

"Every killing that happened at the hands of the cops during the August rebellion was ruled 'justifiable homicide.' Was it justifiable to shoot people in their apartments or anywhere?

"Why?—The cops, Yorty, Parker, Brown, and the whole lot are paid to protect the interests of the rich white imperialists. Those who own factories like GM and Goodyear. South L. A. is a big industrial complex with enough jobs for everyone in the area. The National Guard was really sent in to protect the big industries, not the small corner stores, liquor stores and pawn shops.

"It is these big industrialists and their spokesmen like Yorty and Brown who must be defeated.

"They can't be defeated by pleading and begging. Any nation has the right to revolution and self-determination. *Revolution is necessary.*" This phrase is underlined. "They must be totally re-

placed. Revolution means a complete *overthrow*," which is underlined, "of the system. *No accommodation!! No Compromise!!*" Those phrases are underlined. "The community must be organized block by block. There must be a block leader for each 20 houses who organizes for defensive and offensive actions. Maps must be constructed of the whole neighborhood.

"We must not fear revolution but we must welcome it."

Then in quotes:

"... Revolution is bloody, revolution is hostile, revolution knows no compromise, revolution overturns and destroys everything that gets in its way. And you, sitting around here like a knot on the wall, saying, I'm going to love these folks no matter how much they hate me. No, you need a revolution . . ."

That quote is signed "Malcolm X, 1964."

"Welcome revolution—organize for revolution."

Signed "Progressive Labor Party."

Telephone "399-6819 or WE. 3-0463."

Q Now, we have an exhibit marked Grand Jury Exhibit 2.

Would you examine it, please.

(Witness complies.)

A I have examined it.

Q Have you seen that exhibit before?

A Yes, sir; I have.

Q And did you receive that exhibit at some time and place?

A I did, sir.

Q When and where did you receive it?

A I received this from John Wesley Harris, Jr., on the 25th of May, 1966.

Q Where was that, sir?

A At the County Courthouse during the Deadwyler inquest.

Q And is that the same person you referred to as depicted in the photographs?

A It is, sir.

Q Would you describe and read that text, please.

A This is mimeographed on a yellow legal size piece of paper and it states across the top, "Wanted for the Murder of Leonard Deadwyler:—(A member of the concentration camp) 'Bova-The-Cop' (A guard in the concentration camp)."

"Bova is just one cop in the police department. They must be all wiped out before there is complete freedom. South Los Angeles-Watts is one big concentration camp in which its citizens are subject to systematic extermination.

"We must learn to defeat the enemy before we are all exterminated.

"The members of the concentration camp can be wiped out by hunger also. That's why unemployment is high.

"South Los Angeles is a big industrial complex. There are factories that employ thousands right in the backyards—(General Motors on Alameda and Goodyear on Central just to name two large ones)—of our homes.

"Black people make up 80 per cent of the South L. A. area. Black people should make up 80 per cent of the work force in the South L. A. area.

"We should be able to work where we live.

"The slogan should be raised:

" 'If 80 per cent of us don't work here, you don't produce.' Production can be stopped.

"Murder by cops and death by unemployment are methods of systematic extermination.

"This extermination isn't going to be stopped by going to the court of the exterminator as advised by some 'Negro' politicians and preachers.

"George Washington and the American Revolutionaries never went to King George's court for justice. They smashed King George's court. The Jews never asked to go to Hitler's court.

"The concentration camp must develop its own court and its own method of trial.

"These slogans must be raised: 'Bring Parker, Yorty, and Bova to trial for murder—in a court of the people.'

" 'Disarm the guards in the concentration camp.'

" 'If 80 per cent of us don't work in the factories, *you* don't produce!!!' "

It is signed "Progressive Labor Party."

The telephone number is listed "399-6819."

Q I believe you indicated you received that yourself from John Harris on May 25th of this year?

A 25th, yes, sir.

Q And during the time you attended the inquest, did you see Mr. John Harris, Jr., at the Courthouse where the inquest was being held?

A Yes, sir.

Q On what dates at this time do you recall seeing him there?

A I recall seeing him on the 20th, the 23rd, the 25th and the 26th of May, 1966.

Q And in addition to the fact that you received these leaflets from him, did you see whether or not he was handing them out to other people?

A Yes, sir; he was.

Q And these other persons, were they people that were there to attend the inquest?

A Yes, sir; they were.

Q And ou yourself observed him handing the leaflets, Grand Jury 1 and 2, to these persons?

A I did, sir.

Mr. McCormick: No other questions of this witness.

The Foreman: Thank you for coming, sir.

Mr. McCormick: Lieutenant Brooks.

PIERCE BROOKS,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.
(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do.

EXAMINATION

By Mr. McCormick:

Q Sir, would you state your occupation, please?

A Yes, sir. I am a lieutenant of police for the City of Los Angeles.

Q Now, Lieutenant Brooks, on August 11th of 1965, did an emergency situation arise in the Watts area of Los Angeles?

A Yes, sir.

Q And did you in your capacity as a lieutenant of the Los Angeles Police Department have a specific assignment in regard to that situation?

A Yes, sir. At that time I was assigned to Homicide Division and one of my collateral duties was supervisor of investigations and one of the duties involving supervisor of investigations is to investigate shootings in which officers are involved throughout the City of Los Angeles.

When the riots started, it became very obvious that the decentralized geographic divisions wouldn't be able to handle all the load; they had other problems; and therefore we made a decision and Homicide Division then investigated all the acts of violence and the deaths that occurred during the riot and due to my position I became the coordinator and acted as such in the inquest that followed a month later.

Q From your statement, I take it, then, that this emergency situation was what has now been termed as the August riots of 1965?

A Yes, sir; in Watts.

Q And how long did that riot condition exist, sir?

A It began on August 11, 1965, and our emergency control central was deactivated eight days and 22 hours later. However, there were still an extra amount of police officers and National Guard troops in the area for almost a period of two weeks.

Q What was the area involved in those riots?

A Forty-six square mile area of which 34.4 square miles were in the City of Los Angeles.

Q And what was the number of the Los Angeles Police Department personnel assigned to the riot situation?

A The maximum commitment in the field, at peak—during the peak was 934 officers at one time. That is, uniformed policemen in the riot area at one time.

Q And you mean actually on duty at one time?

A Yes, sir; in the area—that did not include—of course, half of the department was on duty at the time, but these were just officers in the field. This would, to give you an example, in this particular area on a normal night it would take maybe 115 officers to patrol this area.

Q Now, were there any special problems which the Los Angeles Police Department had regarding departmental operations because of the riots?

A Yes. The department was reorganized in that we went on 12-hour shifts, that is, half the people working for half a day and in the last 12 hours it would be the other half of the department. This necessitated in cancelling all days off and many officers came in for their vacations—from their vacations who were on vacations and spending them locally. They came back in. There were—on the conclusion of the riots it was determined that 17,000 man days of overtime were worked by Los Angeles Police Officers during this period of slightly over a week.

Q As a result of the riots, was there any property damage?

A Yes, sir; there was.

Q What was the total property damage?

A It's been estimated at approximately \$40,000,000.

Q And that is from your records that you kept in your capacity as lieutenant of police?

A Yes, sir. All the records and statistics were available to me and are; yes, sir.

Q Was there any damage to the Los Angeles Police Department property?

A Yes, sir.

Q What was that total damage?

A Primarily all to police vehicles.

Q What was the total in dollars and cents, if you know?

A It has been estimated to be \$7,492 done to police vehicles of the Los Angeles Police Department.

Q And those figures, I take it, are from the records of the Los Angeles Police Department?

A Yes, sir.

Q During the riots, did your records reflect whether there were any weapons stolen?

A Yes, sir. There were 851 guns stolen during the riot. The breakdown is 174 rifles, 286 shotguns, and 391 hand guns were stolen during the riot.

Q And do the records indicate how many arrests were made during the riots?

A Yes sir. A total of 3,927 arrests were made in connection with the riots.

Q And also from your records, is there an indication as to how many Los Angeles Police Department officers were injured during the riots?

A Ninety police officers reported injuries.

Q And were there any other agencies involved in policing the riots?

A Yes, sir.

Q What were they?

A The National Guard and the Los Angeles Sheriff's Office, both fire departments from Los Angeles City and County; Santa Monica Police Department sent a detail of men, California Highway Patrol and

the Los Angeles Marshal's Office had men in the riot area assisting us.

Q And were there any of those personnel from other agencies injured?

A Yes, sir; 136 firemen from the City of Los Angeles were injured; 34 of these firemen were injured by rioters, three of them were shot. Ten National Guardsmen were injured and 23 officers of the other agencies were injured during the rioting.

Q Were there any of those personnel—I take it now official personnel, firemen, policemen, National Guardsmen, were there any killed?

A Yes, sir; three.

Q And who were they? I mean what agency.

A One Los Angeles City fireman, one Long Beach police officer and one Deputy Sheriff from the County of Los Angeles.

Q I take it all these figures are from the records that you have under your supervision from your capacity with the police department?

A Yes, sir; that is correct.

Q And they are kept in the normal course of business by the Los Angeles Police Department?

A Yes, sir.

Q Were there any civilians injured during the riots, Lieutenant?

A 1,032 civilians reported that they were injured in various ways.

Q And were there any deaths to civilians?

A Yes, sir.

Q How many?

A Thirty-one.

Q Directly attributable to the riots?

A Yes, sir.

Mr. McCormick: Nothing further.

The Foreman: Thank you for coming, sir.

We will have a short recess.

(Recess taken.)

Mr. McCormick: Lieutenant Archbald.

ALLEN K. ARCHBALD,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.

(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do.

EXAMINATION

By Mr. McCormick:

Q Sir, what is your occupation?

A Police officer for the City of Los Angeles, assigned to 77th Street Division.

Q What is your rank?

A Lieutenant.

Q And what is your particular assignment, Lieutenant?

A At the present time I am in charge of the Vice Detail.

Q And formerly in, let us say, March of 1966, what was your assignment?

A Up to March 15th I was in charge of the vice

assignment at 77th Street. Later on in the afternoon of March 15th I was put in the field in uniform.

Q That was on March 15th of this year?

A Yes, sir.

Q Was there a particular reason on that date at that time why you were put back in uniform and put into the field?

A Yes, sir.

Q What was that, sir?

A We had a riot.

Q And 77th Division, that is a division of the Los Angeles Police Department; is that right?

A That is correct, sir.

Q What area is policed by the 77th Division?

A Roughly we handle everything in the city south of Slauson to the San Diego Freeway from the east County line to roughly the west County line, except where we adjoin University Division along Western Avenue.

Q That is generally the southern portion of the City of Los Angeles?

A Yes, sir.

Q Does 77th Division encompass the area known as Watts?

A Yes, sir.

Q Now, you say on March 15th of this year a riot arose in the area?

A Yes, sir.

Q How long did that riot situation exist then?

A It started on March 15th and reached major proportions probably about 7:00 o'clock that evening and then it descended and ceased in activity on the afternoon of the 16th when we secured our details.

Q And your particular assignment at that time was a supervisor in the field?

A Yes, sir.

Q What was the area, involved, Lieutenant?

A Roughly the Watts area which extends on the west—it is bounded on the west by Central Avenue, on the south by Imperial, on the east by the County line, which is roughly just a few blocks west of Alameda Street, and on the north by 92nd Street.

Q And because of this riot situation, did you initiate special departmental operations?

A Yes, sir; we did.

Q What was that, sir?

A The calling in of additional officers from City side divisions.

Q You increased your personnel?

A That we did, sir.

Q Was there any property damage occasioned by this riot?

A Yes, sir.

Q Do you have any idea of the total property damage?

A No, sir; I don't. We have it documented, but I don't have those figures. There were a number of businesses that had been broken into, looted, several cases of arson, as well as personal attacks on individuals.

Q Was there any damage to Los Angeles Police Department property?

A Yes, sir. There were some police vehicles damaged.

Q You don't have at this time in your records the total of the amount done to police vehicles?

A Not for the 15th and 16th; no, sir.

Q Were there any personnel of the Los Angeles Police Department injured?

A During the two days?

Q Yes.

A 15th and 16th?

None seriously, but there were minor injuries.

Q Were there any deaths that arose during this riot?

A Police or civilians, sir?

Q Any deaths?

A Yes, sir; two.

Q They were to civilians?

A Yes, sir.

Q And they arose during the riots?

A Yes, sir.

Q Do you have personal knowledge whether during these riots on the 15th and 16th of March of this year there were any weapons stolen by persons participating in the riots?

A Not stolen during the 15th and 16th, no, sir, I do not.

Q Now, in your capacity as a lieutenant at the 77th Division from your personal experience, Lieutenant Archbald, since August of 1965 have there been occasions when groups of people in the area which you police have attacked police officers in the course of their duties?

A Yes, sir.

Q And from your personal experience again and knowledge, since August has that number changed any, the number of attacks on police officers?

A Yes, sir.

Q And would you say it is increasing or decreasing?

A It is increasing, sir.

Q And that is a steady increase from August of '65 to let's say May of '66?

A As of August of '66; yes, sir.

Q And how many officers are assigned to the patrol division of the 77th Division?

A We have approximately 200 uniformed officers that work the radio cars in the field.

Q And of your own knowledge, do you know whether any of those officers have been injured this year, 1966, because of action taken against them by groups of people during the course of their duties?

A Yes, sir.

Q Do you have knowledge of how many officers have been injured?

A There have been officers injured to varying degrees. There has been a total since January up until the close of August of 113 assaults on police officers in our division.

Q These are by groups of people while the officers were performing their duties?

A By groups or by individuals; yes, sir.

Q And from your own experience, again, have any of these assaults on police officers followed a pattern?

A Yes.

Q And you understand what I mean by pattern, what you would refer to as an MO, a modus operandi?

A Yes, sir.

Q Would you describe that for me, please.

A There have been several. One that gave us quite a bit of trouble was in the one housing project, a lookout to be stationed in the street, apparent casual person just leaning against a wall, perhaps. Upon a police

car's approach, there would be a signal given by this lookout and from behind the walls of the project the police car would be subjected to a heavy barrage of rocks, bottles, whatever could be thrown at them.

Q And you say this particular procedure has been done on numerous occasions?

A Been repeated very many times, sir; yes, sir.

Q And this type of activity of action directly against officers, that has been on the increase?

A Yes, sir.

Q During police riots occurring on the 15th and 16th of March, was there any gunfire directed toward the officers?

A Yes, sir.

Q On several occasions during those two days?

A On the one occasion I can testify on my own knowledge at approximately 6:20 or 6:30 P.M. of March 15th at 103rd and Wilmington I was present. There were about 20 officers. We were subjected to quite a bit of gunfire. There was one civilian killed at that location.

Q During this firing?

A Yes, sir; not by a police weapon.

Q Do you recall the name of that civilian?

A No, sir; I don't.

Mr. McCormick: No other questions.

The Foreman: Thank you for coming, sir.

The Witness: Thank you.

Mr. McCormick: Captain Holmes.

The Sergeant at Arms: Captain Holmes, please.

By the green chair, there.

S. I. HOLMES,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.

(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do.

The Foreman: All right, sir.

EXAMINATION

By Mr. McCormick:

Q Sir, what is your occupation?

A I am the captain in the Los Angeles County Sheriff's Office.

Q Captain Holmes, in regard to the Los Angeles County Coroner's inquest into the death of Leonard Deadwyler, which began on May 19th of 1966, did you receive any special assignment in your capacity as captain in the Sheriff's Department?

A Yes, sir. I was called downtown to handle the crowd control in the buildings and the halls.

Q And you were the supervisor of the personnel from the Sheriff's Department assigned to crowd control?

A Yes, sir.

Q Where was the hearing first set to be heard, sir?

A On the first day was on May 19th. The hearing was set in Room 501 of the old Hall of Records.

Q Did it take place, that is, the hearing, at that location?

A Yes, sir; it did take place. However, it was changed because of the crowd and it was moved to Department 12 in the Courthouse.

Q And that move was occasioned by the crowd in attendance?

A That's right; yes, sir.

Q What time was the change made from the original place for setting to the Courthouse?

A The change was made at approximately 11:00 o'clock.

Q A.M.?

A A.M., yes, sir.

Q And originally on May 19th what was the number of Sheriff's personnel assigned to crowd control, sir?

A At 8:30 in the morning we started off with one lieutenant, one sergeant and eight deputies to handle the Room 501 in the Hall of Records with six deputies as a standby. By 9:30 we had already put the six standby deputies into the hearing room and at 10:50 we added two more sergeants and 20 deputies to handle the crowd in the hall. After the case was moved in the afternoon to the Courthouse, we added—let me see, it was another 74 deputies. These were all to be deployed in the halls outside of the Courtroom.

Q What was the behavior of the crowd at the original place set for hearing, sir?

A Well, the behavior of the crowd changed. Starting at—approximately—about 9:00 o'clock, there were originally 150 approximately there. Then as the crowd gathered—this 150 was rather well-behaved and quiet.

But as the crowd gathered, it picked up an emotional tension and became quite unruly, pushing and trying to get into the courtroom, filled the halls in the old Hall of Record, clear to the elevators, and as one woman fainted they kept trying to push in and there was a lot of comments, talk and so forth.

Q And then what was the last date of the hearing, Captain?

A The last day, I believe, was May 31st.

Q And I take it each day of the hearing you had your personnel there on crowd control; is that right?

A That's right.

Q What was the total personnel you were using in crowd control in the new courthouse?

A It varied from day to day, but normally the average would be—or rather I would say the largest number we used would be—we had 27 men inside of the courtroom; we had 60 men, and these are all uniformed deputies, 60 uniformed deputies in the hall for the control of the crowd in the hall. And then we maintained 180 standby personnel, also uniformed personnel, and 30 plainclothes personnel. These people were used at different times.

Q Now, did an occasion arise when it became necessary to—for you to direct your sheriff's personnel to take action against the crowd?

A Yes, sir; it did. We were required to move a large crowd from the halls in the Courthouse.

Q What date was that, sir?

A This was on Friday, May 20th. Happened at approximately 11:00 o'clock.

Q And this was by physical action that deputies moved these people?

A Yes, sir.

Q Prior to that, had there been any request made for them to move, or clear the hallway?

A Yes, sir. There had been a request made by Assistant Chief Cully of the Los Angeles Fire Department. The crowd was blocking the halls and did provide a hazard and—a fire hazard as well as—well, there was just no traffic within the hall at all. It was completely blocked. He made an announcement through a hand amplifier, hand mike, and asked first that they disperse, and talked to them for two or three minutes in trying to talk them out, and there were continual cat-calls and talks that they were not going to leave until they were admitted into the courtroom. And Chief Cully continued to talk to them and told them at that time that if the crowd didn't move and didn't disperse that they would be moved by Sheriff's personnel.

Q When he made that announcement, did they move?

A No, sir. There was the continual cat-calls and statements, repeated statements by many of the people in the crowd that they had no intentions of moving and weren't going to move.

Q Did you then direct your Sheriff's personnel to move them out of the hallway?

A Yes, sir; I did.

Q What was the average attendance by persons attending the inquest? What was the average number, Captain?

A We had 152 seats in the courtroom. Now, I am talking about in Department 12. There were 152 seats for spectators which were always filled. And we had varying crowds outside. It went up to two and three hundred people or more.

Q And were you able to estimate the ethnic make-up of the crowd?

A Yes, sir. The ethnic makeup originally was about 90 per cent colored, 10 per cent Caucasian on the first day. It moved from there to between 80 and 85 per cent colored and the rest Caucasian during the remaining days of the trial.

Mr. McCormick: I have nothing further.

The Foreman: Thank you for coming, sir..

Mr. McCormick: Mr. Taylor.

The Sergeant at Arms: Mr. Taylor, please.

Right over there by that green chair, sir.

OLIVER TAYLOR,

called as a witness before the Grand Jury, was duly sworn as follows:

The Foreman: Would you raise your right hand.

(Witness complies.)

The Foreman: You do solemnly swear that the testimony you are about to give upon the investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God?

The Witness: I do.

The Foreman: Will you have a chair here.

EXAMINATION

By Mr. McCormick:

Q Sir, what is your occupation?

A Sergeant with the Los Angeles County Sheriff's Department.

Q And Sergeant Taylor, did you have a special assignment in your capacity as Sergeant of the Los Angeles County Sheriff's Department during the Dead-

wyler inquest which was held from May 19th to May 31st of this year?

A Yes, sir; I did.

Q And it is my understanding that the inquest from the date of the May 20th was held in the new Courthouse in Department 12; is that correct?

A Yes, sir.

Q That was the inquest inquired into by the Los Angeles County Coroner regarding the death of Leonard Deadwyler?

A Yes, it was.

Q Who allegedly met his death from a gun in the hands of a Los Angeles police officer whose last name was Bova?

A Yes, sir.

Q Now, what was your assignment during the inquest, sir?

A The start of the inquest on the 19th of May, a Thursday, I was to supervise the uniformed deputies who were sent to the old Hall of Records in crowd control and maintaining order within the hearing room.

Q And were you in the old Hall of Records on the 19th?

A Yes, sir.

Q Did you have any problems with the crowd?

A Yes, sir; we had a great deal of problems.

Q And what type of problem was that, sir?

A We had difficulty maintaining order outside the hearing room because of the large number of people there demanding entrance. We could not maintain order. We could not quiet the crowd down. And ultimately the hearing was suspended at that point and transferred to the new Courthouse.

Q And when the hearing was resumed, was it resumed in Department 12 of the new Courthouse?

A Yes, it was.

Q And did you have an assignment there?

A I did.

Q What was that, sir?

A Again it was to supervise the uniformed personnel within the courtroom. My assignment was the supervision of one half of the personnel within the courtroom on the one side of the courtroom.

Q Now, do you know the number of spectators within the courtroom?

A I could answer only that the seating capacity, or the total number that were there—

Q What was that?

A The seating capacity of the courtroom itself is 252. There were a certain number of seats set aside for press, guests and witnesses. The remaining 152 seats were left to be occupied by spectators.

Q And were they occupied each day during the course of the inquest?

A Yes, they were.

Q And during the course of the inquest, were you able to estimate the ethnic makeup of the spectators?

A I was.

Q What was that?

A The first day of the inquest it was my estimation that the makeup of the spectators was at least 90 per cent Negro, 10 per cent Caucasian, Mexican-American. The makeup of the spectators remained about the same, although it did—the amount of the Negro spectators did diminish toward the end of the inquest. I don't believe it ever got below 80 to 85 per cent Negro.

Q Now, before you are two exhibits which have been marked Grand Jury's 1 and 2. Do you see them, the leaflets?

A I do.

Q Now, referring to the leaflets which are joined together, which have been marked Grand Jury Exhibit 1, during the course of these inquests at any time did you observe that particular item, the exhibit Grand Jury 1 within the courtroom?

A Yes, I did.

Q What was the occasion in which you observed these leaflets?

A I observed the leaflets, such as this, carried by the spectators within the courtroom.

Q And regarding the exhibit Grand Jury 2, during the inquest did you ever see that exhibit within the courtroom?

A Yes, I did.

Q And what was the occasion in which you observed that exhibit or exhibits similar to it?

A These also were being carried by members of the spectators.

Q Now, within the courtroom itself, did any of the number of spectators indicate by their actions any feeling or demeanor?

A Yes, they did.

Q What were those occasions?

A On several occasions some of the spectators approached both myself and other officers within the courtroom and threatened them.

Q Threatened them? In what manner would they speak? Do you recall any occasions?

A Yes. One specifically that comes to mind, one individual approached two deputies who—uniformed

deputies who were working under my direction and he advised them that they—in effect, he told them that they shouldn't turn their backs on him because if they did that he would kill them.

Q Who was making that statement, a spectator?

A A spectator, yes.

Q And did this happen on numerous occasions, that manner of speaking toward the deputies?

A Several occasions, two to three that I witnessed personally.

Q During the course of the testimony, were there any audible comments from the spectators?

A Yes, sir.

Q And what was their demeanor at that time?

A During the testimony by various witnesses, if they seemed to be pleased by the comments made by the witness, there would be cheers or shouts of glee. If they were unhappy or displeased with the testimony, then there would be oohs and ahhs of disbelief. That's the way I interpreted the sounds.

Q Based upon your observation, did the spectators appear to be in an emotional state during the course of the inquest?

A Yes, sir.

Mr. McCormick: I have nothing further of this witness.

Nothing further.

The Foreman: We have some more.

Q By Mr. McCormick: Now, while you were assigned as Sergeant in charge of the Sheriff's personnel within the courtroom, did the crowd indicate hostility towards the police personnel?

A Yes, they did.

Q That was the entire crowd as a group?

A No, I wouldn't say the entire crowd. I would say a vast majority of the crowd.

Mr. McCormick: Nothing further.

The Foreman: All right, sir. You are excused. Thank you for coming.

Mr. McCormick: That concludes the evidence.

LOS ANGELES, CALIFORNIA, TUESDAY, SEPTEMBER 20, 1966. 12:00

* *

(The following proceedings were had in Department 100 of the Superior Court, before the Honorable Arthur L. Alarcon, Judge Presiding:)

The Court: I note, Mrs. Bancroft, that the 1966 Grand Jury is present in the courtroom.

Will you call the roll of the Grand Jury, please.

The Clerk: Yes, your Honor.

(Whereupon the Clerk called the roll of those Grand Jury members present.)

The Clerk: Eighteen Grand Jurors answer present, your Honor.

The Court: Thank you, Mrs. Bancroft.

Mr. Munger, does the Grand Jury have an Indictment to return to the Court?

The Foreman: We do, your Honor.

The Court: Would you hand it to the Bailiff, please.
(The Foreman complies.)

The Court: The Bailiff has handed me one Indictment, apparently in two Counts.

Mr. Munger, in the deliberations on this Indictment, did at least 14 of the Grand Jurors participate in all the deliberations?

The Foreman: They did, your Honor.

The Court: And of those 14 or more Grand Jurors who participated in all of the deliberations, did at least 14 vote for the return of this Indictment?

The Foreman: At least 14 did, your Honor.

The Court: Thank you, Mr. Munger. Be seated.

The Court finds the Indictment to be a True Bill. The Clerk is ordered to file this Indictment. A bench warrant is ordered to issue for the apprehension of the defendant. Bail on the bench warrant will be fixed as recommended by the Grand Jury, plus the penalty assessment.

Is Mr. Howard here?

Mr. Howard: Yes, your Honor.

The Court: Is this defendant in custody, Mr. Howard?

Mr. Howard: No, your Honor. May we ask for an immediate bench warrant to be picked up by representatives of the District Attorney's Office.

The Court: Yes. All right. The bench warrant is ordered to be processed and then turned over to the District Attorney's Office investigators for service.

All right, thank you very much.

(Whereupon the proceedings were concluded.)

Certificate.

The Grand Jury of the County of Los Angeles, State of California.

The People of the State of California, Plaintiff, vs. John Harris, Jr., Defendant. No. 328981.

State of California, County of Los Angeles—ss

I, LOIS R. JOHNSON, Official Court Reporter of the Superior Court of the State of California, for the County of Los Angeles, do hereby certify that I was, on the 20th day of September, 1966, appointed and sworn to report all the testimony and proceedings had in the above-entitled matter before the Grand Jury of Los Angeles County; that the foregoing pages 1 through 48, inclusive, are a true and correct transcript of my Stenotype notes and a full, true and correct statement of said testimony and proceedings.

Dated this 28th day of September, 1966.

Lois R. Johnson
Official Reporter